IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.9535 OF 2004

Gajadhar Baikuntha Pande).. Petitioner

Versus

Parmanand Lalchand Joshi and others).. Respondents

Mr.Nitin Jamdar for the Petitioner.

Mr.R.G.Ketkar for Respondent Nos.1 to 9.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 8TH AUGUST 2005

P.C.:

. The Petitioner challenges the order dated 18th August 2004 as also the order dated 24th March 2004 whereby his application for filing the Written Statement beyond the period of 90 days has been rejected. It appears that after the Suit was filed on 30th June 2003, the Respondents sought to serve the Petitioner. The Bailiff's report indicates that the Petitioner was not residing in the suit premises. Therefore a public notice was sought to be issued. This notice was published on 16th October 2003. The Petitioner did not remain present even thereafter. On 7th November 2003 the Suit was set down for ex-parte hearing. An application was made by the Petitioner on 5th February 2004 for permission to file Written Statement beyond the period of 90 days.

This application was rejected by the trial Court on 24th March 2004 in view of the judgment of the Division Bench of this Court. Thereafter, review application was filed by the Petitioner which came to be rejected on 18th August 2004.

2. The learned Advocate for the Petitioner submits that the Petitioner was not able to remain present and has shown sufficient cause in the application for remaining absent when the matter was fixed for filing Written Statement as well as after publication of the Court's notice. He relies on the judgment of this Court in the case of *Chintaman Sukhdeo Kaklij and others* vs. *Shivaji Bhausaheb Gadhe and others*, **2004 (4) Mh.L.J. 739**, to submit that it is not in each and every case of delay in filing Written Statement that the trial Court should dismiss the application filed by the Defendant.

3. Mr.Ketkar for the Respondents vehemently opposed the application as, according to him, the Petitioner had several opportunities for filing Written Statement and, therefore, the delay in filing it need not be condoned and the Written Statement should not be accepted on record.

4. In the case of *Chintaman Kaklij* (supra), the Division Bench of this Court has held that the provisions

of Order 8 Rule 1 of the Code of Civil Procedure should be borne in mind by the trial Court while passing an order extending time for filing Written Statement to the Suit and ordinarily such extension should not be granted except in exceptional and special circumstances. A perusal of the application filed by the Petitioner does indicate that the Petitioner had sufficient reasons for not filing not filing the Written Statement within the time prescribed. In this view of the matter, Petition allowed. Impugned Orders dated 24th March 2004 and 18th August 2004 passed in Civil Suit No.215 of 2003 are set aside. Application filed by the Petitioner at Exhibit 49 in Civil Suit No.215 of 2003 allowed on payment of costs of Rs.2000/- (Rupees Two thousand only).

5. Hearing of the Civil Suit expedited.